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U.S. DISTRICT COURT
DISTRICT OF MASS.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE:

REEBOK EASYTONE LITIGATION

CASE No. 4:10-CV-11977-FDS

CLASS ACTION

Objection to the Proposed Settlement,
Objection to the Class Notification, and
Objection to Attorney's Fees.

**AMENDED OBJECTION TO THE PROPOSED SETTLEMENT,
OBJECTION TO THE CLASS NOTIFICATION, AND OBJECTION
TO ATTORNEY'S FEES.**

To The Honorable District Judge:

Comes Nikki Johnson ("Objector"), and file this Objection to the Proposed Settlement, Objection to Class Notification, and Objection to Attorneys' Fees.

1. Objector is a Class Member

Objector Nikki Johnson is a resident of Dallas, Texas and received notice by mail of this Settlement at 3141 Hood St, Ste 200, Dallas, TX 75219. A copy of the Claim Form is attached hereto.

I object to the settlement in this case and I am member of the purposed Class.

1 **2. Proposed Settlement Attempts to Place Unlawful Restrictions on Objectors**

2 I object to paragraph 12 of the Preliminary Approval Order and Paragraph VI (A)
3 of the Settlement Agreement that require more extensive documentation of a sales
4 purchase than is required to file a claim or to opt out of the Settlement. I have only been
5 able to obtain proof of purchase on two products, but I purchased more than two.

6 The Proposed Settlement attempts to place unlawful requirements on objectors—
7 contrary to Supreme Court authority. In *Devlin v. Scardelletti*, (2002) 536 U.S. 1, the
8 Court held that objectors who appear at the fairness hearing have the right to appeal
9 approval of a proposed settlement. The *Devlin* Court did not expand that requirement of
10 appearing at the hearing to include other requirements such as having a valid proof of
11 purchase when similar documentation is not required to opt out or file a claim.

12 Nonetheless, and contrary to *Devlin*, the Settling Parties' agreement (and the
13 Notice they wrote) purports to require objectors to submit proof of purchase
14 documentation long before the fairness hearing on pain of not being heard.

15 This purported requirement in the Settling Parties' agreement is, it is submitted,
16 unlawful.

17 Further, the Notice is misleading in claiming that objectors will not be heard if
18 they do not file and provide additional information.

19 From the Notice and Claim Form I received it is obvious that I am in the Reebok
20 data base as a purchaser of covered products. Only if someone is not in the Reebok data
21 base is it proper to ask for additional documentations; such as may be requested by the
22 claims administrator.

1 It is respectfully submitted that a settlement agreement containing unlawful terms
2 and founded on a misleading notice to class members may not be properly approved.
3

4
5 **3. Objection to the Requirement of the Claim Form**

6 In a world of junk mail important notices such as “you are a member of a class
7 action” may go unopened and unread. From Paragraph IV of the Settlement Agreement
8 it is clear the parties will rely in part upon data bases obtained from Reebok. For
9 individuals such as myself who are members of the class, as reflected in the Defendant
10 Reebok’s own records, there should be no requirement to file a claim. A check should
11 simply be sent. Requiring a claim form is simply a barrier to class members being
12 compensated.
13

14
15
16 **4. Adequacy of Representation**

17 The class representatives failed to fairly and adequately represent the interest of
18 class members when they agreed that class members needed to file a claim in the
19 Settlement Agreement. To the extent that Reebok has documentation of purchases by
20 class members they should simply be sent a check and not have to file a claim form. The
21 Representatives failed in their duty to class members.
22

23
24 **5. Objection to Class Notice**

25 Neither the Court in it’s Preliminary Approval Order, or the Settlement Agreement,
26 notes how many class members purchased eligible Reebok shoes or apparel from
27 December 5, 2008 through October 12, 2011, or the value of products purchased. The
28

1 Settlement does provided mechanisms for adjusting the amount a class member may
2 receive and makes provision for unclaimed funds to go to the Federal Trade Commission.

3
4 This lack of information alone in the notice makes the notice inadequate. However,
5 the issues with adequacy of notice continues because no notice is given to the class of the
6 estimated costs of notice or administration. Notice given to the class is not adequate and
7 sufficient (notice to the class members) because of its lack of information concerning the
8 amount that may ultimately be returned to the class.

9
10
11 **6. Objections to the Settlement**

12 The settlement is not fair, reasonable, or adequate, and Objectors object to the
13 proposed settlement, for the following reasons:

14 The settlement has been reached with questions outstanding concerning
15 discovery. Although the parties claim formal discovery, it appears much of the
16 information was provided by Reebok though informal means.

17
18 The class does not know the amount of money at issue or simply the universe
19 of possible damages to compare against the settlement. Currently, without fundamental
20 financial information and a discussion of possible success on the merits it is not possible
21 to approve the settlement as being fair, reasonable and adequate to the class.

22
23 What is the value of the settlement to class members? We do not know as
24 neither the Settlement Agreement or Preliminary Approval Order even attempts to make
25 an estimate. It is difficult to evaluate a settlement without an estimated value to the class,
26 which further makes evaluation of attorneys fees difficult.

1 **7. Objections to the Fee Petition**

2 Fed. R. Civ. P. 23(h) provides, in relevant part:

3 (h) Attorney's Fees and Nontaxable Costs. In a certified
4 class action, the court may award reasonable attorney's fees
5 and nontaxable costs that are authorized by law or by the
6 parties' agreement. The following procedures apply:

7 (1) A claim for an award must be made by motion
8 under Rule 54(d)(2), subject to the provisions of this
9 subdivision (h), at a time the court sets. Notice of the
10 motion must be served on all parties and, for motions by
11 class counsel, directed to class members in a reasonable
12 manner.

13 (2) A class member, or a party from whom
14 payment is sought, may object to the motion.

15 The amount of the proposed fees in relation to the alleged benefits to the class
16 renders the settlement unfair and unreasonable. The amount of the proposed attorneys'
17 fees is an integral element in determining whether the settlement is fair, reasonable, and
18 adequate.

19 Objector objects to the request for fees to Class Counsel. In this case there should be
20 a cross check using the lodestar method.

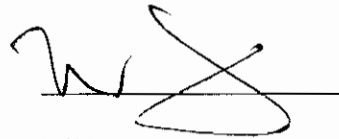
21 **8. Telephone Participation**

22 I request permission to participate by listening by telephone to the Fairness
23 Hearing as I live in Texas.

24 **9. Objector Incorporates any Proper Objections Filed by Other Objectors**
25 **Herein.**

1 Wherefore, Objector prays that the Court deny the proposed settlement, deny the
2 requested fees to Class Counsel and grant Objector such other and further relief as to
3 which Objector may be entitled.
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6 Respectfully submitted,

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10 Nikki Johnson. Pro se
11 3141 Hood St, Ste 200.
12 Dallas, TX 75219
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Certificate of Service

I hereby certify that a copy of the above and foregoing document has been served on January 25, 2012 and by mail to the following:

Clerk of the Court
United States District Court
District of Massachusetts
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